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No. 351

In the Supreme Court of the United States

OCTOBER TERM, 1930

A. JAMES ECKERT, PETITIONER

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

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In addition to the rulings of the Bureau of Internal Revenue mentioned in the footnote on page 7 of our original brief, we direct the attention of the Court to the following rulings and decisions which are not cited in our original brief:

I. T. 1167, PUBLISHED IN 1-1 CUMULATIVE BULLETIN (JANUARY–JUNE, 1922), P. 149

During 1916 A was induced to invest $10,000 in the stock of a proposed corporation. A gave his note for the amount and the stock was issued.

During 1916 it developed that the stock was worthless. A's note had been discounted at a bank. During 1917 A paid x dollars on the note discounted at the bank and gave a new note for $4x$ dollars, which amount he paid in 1918. The ruling was that, assuming A to be on the cash basis, he could not deduct any loss until he paid something on the note. The memorandum concluded with this statement:

> A may deduct the payments on the note in computing the income for the years in which such payments were made. The fact that the loss was discovered in 1916 is immaterial, because the date of discovery does not determine the date on which the loss was sustained.

A. R. M. 201, PUBLISHED IN II-1 CUMULATIVE BULLETIN (JANUARY-JUNE, 1923), P. 86

Here the Committee concurred in the views expressed in an informal opinion of the Solicitor of Internal Revenue of September, 1922. This involved the case of a taxpayer who had endorsed certain notes, and on account of the bankruptcy of the maker of the notes he was called upon to pay them. He did this by making part payment in cash in 1920 and giving four notes payable in later years. The Solicitor and the Committee on Appeals and Review held that if his returns were upon the accrual basis the deduction of the entire amount

of the notes should be taken in the 1920 return, but that if the return was made upon the cash basis deduction could be taken in the 1920 return only for the amount paid in that year and the remaining amounts should be taken as deductions in the years in which those amounts are actually paid.

In *Miniger* v. *Denman*, decided July 2, 1930, by the District Court for the Northern District of Ohio (reported in paragraph 1325 of the Prentice-Hall Federal Tax Service for 1930), the following paragraph appears in the journal entry:

> 2. That the plaintiff made his income-tax return for the year 1921 upon the cash receipts and disbursements basis; that a part of the agreed purchase price to be paid by the plaintiff for the Common Stock of Willys Corporation owned by him during said year is represented by a demand note in the amount of $60,000 to the order of John N. Willys, from whom plaintiff purchased said stock; that said note has not been paid and is still outstanding in the hands of John N. Willys, the original payee; that to the extent that the purchase price of said stock is represented by said note, the loss thereon is properly deductible, not at the time the stock became worthless, but at the time of payment of said note if, when, and to the extent that said note shall be paid, to which plaintiff excepts.

See, also, *Osterloh* v. *Lucas*, 37 F. (2d) 277 (C. C. A. 9th).

Respectfully submitted.

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